manner less than 10% of the time. Customers in the process of migration, but who have not had their FOCs issued to their new carrier have experienced run-arounds usually attributed to the new CLC, because such poor service presumably did not happen with the old Pacific Bell service. Untimely FOCs impede the entire migration process and slow down the ability of a CLC to respond to its new customer in a timely and satisfactory manner because of the run-around situation described above. The lack of a timely FOC also costs CLCs money in that no firm cutover date is established, and the CLC cannot start billing its new customer although Pacific is charging the CLC access fees for that customer. In the case of business customer migration, the lack of a confirmed migration order can cause a disruption of the customer's business since the customer may call two different carriers seeking the appropriate repair department. When such disruption occurs because Pacific could not meet the customer's targeted migration date, the customer blames the CLC, not Pacific. Thus, by simply ignoring its commitments, Pacific can force CLCs to incur additional costs and harm to their reputation. And, Pacific ultimately reaps the benefits of tarnished CLC reputations. This, in turn, may also result in the customer returning to Pacific.

Without timely FOCs, CLCs lack information necessary to meet customer notification and statusing requirements. This also means that the critical "welcome call" by a CLC to a new customer cannot be made until

Pacific sends the FOC (which signals that the migration order is in process).[32] Pacific's late FOCs benefit only itself.

5.3 Jeopardy Notices.

After a FOC is issued the next step should be Pacific's notification of CLCs that the customer has indeed been moved from Pacific to the CLC. Often, Pacific will not meet its own liberal, promised completion dates. When this happens, Pacific issues a jeopardy order indicating to the CLC and its customer that there will be a new completion date. Although time is obviously of the essence in the issuance of a jeopardy order, Pacific is often late in issuing these critical notices. This eventually results in harm to the CLC. (In contrast, Pacific notifies its own customers in a timely manner that it will not make a promised completion date.) Once a jeopardy order is issued, Pacific will then pick a new completion date. It would be logical to assume that since it picked the date, Pacific should have a 100% rate in meeting the date. This is not the case. Pacific fails to meet its own completion date an astonishing 40% of the time.

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[32] The "Welcome Call" is important to let the customer know who to call if there is a problem with service. If the CLC does not know that migration has been completed, no welcome call is initiated. Thus, if the new CLC customer has a problem with service or would like to add some features, the customer does not know who to call. Calls to Pacific's representatives invariably result in Pacific trying to "win back" the customer, to the possible detriment of the CLC. Thus, although seemingly trivial, the "welcome call" actually is an important component of migration, and thus local competition.

5.4 Completion Orders.

Once the migration order has actually been worked by Pacific, it must then send the CLC a notification that the order has been completed. Even once completed, Pacific has failed to give CLCs timely notice of completion. Actual experience has shown that although the SGAT target time for completion of the service order is 24 hours, Pacific currently completes a migration order in *48 or more hours*. A completed migration means that the CLC can initiate billing, thus billing does not occur until the CLC receives the completion notice, which Pacific has generally been unable to provide on a timely basis. As explained below, a completed migration notice also assures the new customer of repair service if necessary.

When the CLC receives a completion notice long after completion has occurred, the first bill it sends its customer can cover substantially more than one billing period, generating customer confusion and dissatisfaction. Compounding the lack of information is the inability of the CLC to get access to the CSR (detailed above). A disassociation of customer information will result if interim service or maintenance problems occur between the exchange of completion data and the actual service cutover date. The SGAT does not solve any of these problems because it is so vague as to be unreliable. Simply, until Pacific actually offers what the SGAT says it offers, these OSS deficiencies will continue to stymie local competition.

5.5 No Parity in Troubleshooting.

Without the FOC and the notice of completion, the CLC has no way to know if a customer has been migrated, and thus a CLC cannot confirm for a customer who their service provider is during any storms or outages. Substantial harm results. For example, Pacific will refuse to respond to a trouble call from a customer once its records show that a customer migration is completed. However, the CLC cannot record the customer as its own until it has received a notice of order completion from Pacific. Because Pacific does not provide this information in a timely manner, there is a period of time during which a CLC cannot confirm that the customer has been migrated to it even though Pacific knows of the migration. This can result in delay and confusion in responding to customer service calls.

5.6 Waste of CLC Resources.

Although Pacific's SGAT promises certain timely status reports of the order process, Pacific's past performance indicates that it is certain to fail to meet the commitments stated in the SGAT. And, Pacific has made no attempt to explain to this Commission how it can meet these deadlines in light of its historical inability to do so. These failures will negatively affect CLCs. The workload of the CLC agents is increased by unnecessary demands, as using several hours of each day just to check the status of a migration order which has not been notified to the CLC within the four hour

time frame promised by Pacific. The constant checking by CLC representatives is an unnecessary waste of CLC resources which only increases the expense to the new entrant, and puts it at a financial and unfair disadvantage in comparison with Pacific.

6. No Parity In Maintenance For CLC Customers.

As stated above, the SGAT is premature. Crucial operations functions for maintenance have not been negotiated and are not in place. Pacific should have met all necessary agreements regarding maintenance before the SGAT was filed. Any dependence on negotiating at an uncertain future date is misplaced. Section 251 of the Act requires that Pacific be generally offering maintenance interfaces on parity, not just promises to implement. Yet, promises are all the SGAT offers. In Attachment 12, pertaining to maintenance, the SGAT offers a meeting to agree upon dates and a schedule to implement Electronic Bonding Interface ("EBI"). SGAT, Attachment 12, Section 3.1. This is deficient first because EBI is not even on the horizon of Pacific's releases of interfaces, and second because CLCs must wait until EBI is available to achieve any sort of parity with Pacific.

Likewise the SGAT provides that repair calls by CLC customers cannot be directly routed to CLCs but, instead, must be passed on by Pacific. SGAT, Attachment 5, Section 4.3.2. This, in itself, is discriminatory because this process results in Pacific being able to offer its customers a faster response time for repairs than CLCs. Although Pacific mentions

routing 611 repair calls directly to any CLC's repair platform, the SGAT says that this will be done "As soon as reasonably practical" which is, of course, no guarantee of any firm implementation date, and certainly does not constitute something that is generally available. SGAT, Attachment 5, Section 4.3.2. In the interim, CLCs are supposed to rely on Pacific's interim systems.

Moreover, even the interim systems (which do not meet Section 251 requirements), are not at parity with Pacific's own real-time systems. The same lack of real-time computerized access to Pacific's OSS functions and systems like SORD hampers the ability of CLCs to give their customers necessary maintenance and repair service. Currently, Pacific provides a Pacific Bell Service Manager ("PBSM") system and a 1-800 number for CLC maintenance and repair service support. *See* SGAT, Attachment 12, Section 3.1. The PBSM is unreliable because it is insufficiently integrated with the LISC. The PBSM often does not have the necessary information on the resale customer from the LISC to trace resale orders and follow-up with maintenance or repair on a timely basis. Calls to the 1-800 number go unanswered or are put on hold for excessive lengths of time. Similar to the problem with FOCs and notices of completion, Pacific often fails to fulfill its obligation to give timely notice to a CLC when there is a change in commit time or when a trouble ticket is closed. By relying on the PBSM, the SGAT

does not offer a generally available electronic interface in fulfillment with the requirements of the Act.

7. No SGAT Approval Until Pacific Provides OSS Parity.

Each of the problems discussed above stems from the systemic lack of parity between Pacific and the CLCs with regard to electronic interfaces which provide access to Pacific's OSS. The SGAT filed by Pacific in no way solves the current OSS problems because the SGAT, by its very terms, delays implementation of fully electronic access to OSS and must thus fail on its face. Each of these problems may be slightly alleviated by temporary improvements, but they certainly will not be solved until there is true electronic interfaces that comply with the ACt and Rules. [33] Until such time, no SGAT can be deemed to comply with §§ 251 and 252(d).

Accordingly, this Commission cannot and should not approve Pacific's SGAT until its OSS provisions comply with the Act. This will not occur until the SGAT actually offers fully electronic interfaces rather than merely promising them at some point in the future. Until CLCs have real-time

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[33] Therefore, it is critical that the Commission provides incentives for Pacific to perform according to its commitments. The appropriate enforcement mechanism is the Act itself. The SGAT must comply with Sections 251 and 252(d). Moreover, the requirement that Pacific *must* satisfy *the entire checklist* before its affiliate Pacific Bell Communications ("PB Com") can receive authority to enter the long-distance market. *See TA96* § 271(c)(2). This Commission should ensure that this directive is adhered to by Pacific as soon as possible. As time passes, Pacific's wholly inadequate ordering procedures are taking their toll.

computerized access to the same fully electronic OSS functions that Pacific has, Pacific will be using an ordering system that is far superior to that of its competitors. That disparity is not permitted under the Act:

> "[Interconnection must be] at a level of quality that is equal to that which the incumbent LEC provides *itself, a subsidiary, an affiliate, or any other party* . . . . At a minimum, this requires an incumbent LEC to design interconnection facilities to meet *the same technical criteria and service standards that are used within the incumbent LEC's network*. This consideration is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier."

FCC Order, Appendix B, § 51.305(a)(3) (emphasis added). Until Pacific provides the same fully electronic OSS functionality to CLCs that Pacific provides to itself, CLCs will be subject to "unreasonable [and] discriminatory conditions or limitations" in trying to resell Pacific's services. *TA96* § 251(c)(4)(B). For the foregoing reasons, Pacific's SGAT is insufficient on its face.

C. Unlawful And Unreasonable Restrictions On Resale.

1. Unlawful Restriction On Aggregation Of CLC End User Volumes To Qualify For Resale Volume Discounts.

Section 251(c)(4) of the Act prohibits any unreasonable or discriminatory restrictions on resale by incumbent telephone companies. The SGAT does not allow CLCs to utilize any volume discounts based on its own volumes that Pacific makes available to its end user customers, but instead

requires that CLCs end users themselves must qualify for such discounts. SGAT, Attachment. 5, Section 2.1. In Paragraph 953 of the *FCC Order* and 47 C.F.R. § 51.613(c), a regulation that is not subject to the stay issued by the U. S. Court of Appeals for the Eight Circuit, the FCC ruled that it is an unreasonable restriction on resale for an incumbent local telephone company to refuse to extend volume discounts to resellers in the aggregate (i.e., so long as all of the reseller's end user customers, taken together, have sufficient usage to qualify for the incumbent's volume discounts).[34] Thus the SGAT violates Section 251(c)(4) of the Act and the FCC's implementing regulations.

2. Unlawful Restriction On Resale Of Promotions Of Less Than 90 Days Duration.

In applying the prohibition against unreasonable resale restrictions in Section 254(c)(4) of the Act, the FCC addressed and rejected claims by ILECs that they should not be required to apply the wholesale discount to promotional rates and other special promotions. In Paragraphs 948-51 of the FCC Order, the FCC concluded that it is an unreasonable restriction on resale for an incumbent to refuse to provide promotional rates on a wholesale basis for promotions of 90 day or more (i.e., subject to the wholesale discount). The FCC further held that short-term promotions of less than 90 days are to

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[34] But see the Commission's decisions addressing this point such as CPUC Resolution T-16011. But for reasons explained above, the members of the Coalition disagree with the Commission's position.

be offered for resale without application of the wholesale discount. Section 51.613(2) of the FCC's regulations, 47 C.F.R. § 51.613(2), a regulation that is not subject to the stay issued by the U.S. Court of Appeals for the Eight Circuit, likewise requires that incumbents offer resale promotions of less than 90 days duration. Contrary to the FCC's regulations, the SGAT does not permit the resale of short-term promotions. SGAT, Attachment 5, Section 2.1.

The inability of CLC resellers in California to resell promotional Pacific services of less than 90 days duration will substantially impede competition and harm consumers. If Pacific is permitted to offer promotional rates that are not eligible for resale, or to which the wholesale discount is not applicable, Pacific can undercut the wholesale market and the availability of resale as a means of competition. Furthermore, market entry will be greatly diminished. This contradicts the Act's mandate that new entrants have the opportunity to resell monopoly services offered by incumbents as a means of entering the local telephone market.

3. Unlawful Restrictions On The Branding Of Resold Directory Assistance And Operator Services.

In order to compete in the local telephone market, some services that a CLC purchases from an incumbent for resale require special provision for carrier and servicemark identification, known as "branding." Branding is especially important for resold operator services and directory assistance services, as these services are closely identified by the consumer with the

carrier, and constitute the means by which a new entrant establishes a "brand name" in the local telephone market. Brand identification is thus crucial to a resellers "ability" to compete with incumbents and also minimizes customer confusion.

Section 251(c)(4) of the Act prohibits any unreasonable or discriminatory restrictions on resale by incumbent telephone companies. The FCC also held that an incumbent's refusal to brand operator services and directory assistance services is an unreasonable resale restriction unless the incumbent "prov[es] to the state commission that it lacks the capability" to comply with a request for branding. FCC Order ¶ 971.

Section 51.613(c) of the FCC's regulations, 47 C.F.R. § 51.613(c), a regulation that is not subject to the stay issued by the U.S. Court of Appeals for the Eight Circuit, provides that an incumbent local telephone company must brand resold operator services and directory assistance services unless it makes such a showing of technical infeasibility to the appropriate state commission. No showing has been made by Pacific that branding of directory assistance and operator services is not technically feasible. Contrary to the FCC's regulations, the SGAT includes the unduly broad restriction that branding of such services is only to be provided "where technically feasible". Pacific especially should be required to overcome the presumption that branding of such services is technically feasible given the fact that GTEC is required to brand directory assistance and operator

services. GTEC was specifically found to have failed to demonstrate that branding was not technically feasible. MCI/GTEC Arbitrator's Report, A.96-09-012, December 11, 1996 at 49.

D. Discriminatory Pricing Of Unbundled Network Elements.

1. There Are No Cost Based Rates For Network Elements.

In order to be approved, the SGAT must offer prices for its various terms and conditions in compliance with Section 252(d)(1) of the Act. There must be cost-based and nondiscriminatory rates for any and all unbundled network elements in order for the Commission to approve the SGAT under Section 252(f). Under the FCC Order and Rules, cost-based rates for unbundled network elements must be derived through total element long run incremental costing for them to be nondiscriminatory. That, in fact, is the cost Pacific incurs itself.

As explained above, this Commission has not yet established what permanent rates will comply with the Act because the OANAD process, R.93-04-003/I.93-04-002, are still proceeding. Cost-based rates which comply with the Act will not be determined until this phase of the Commission's OANAD docket, is completed, which is anticipated to be late 1997 or early 1998 at the earliest. Until that time, the SGAT's incorporation of interim rates cannot be deemed to comply with the pricing rules of Section 252(d) of the Act because the interim rates are not cost-based as required by the Act. At best, the SGAT is a premature filing.

Moreover, the SGAT fails to comply with Section 252(d)(1) in two respects. First, many rates for network elements are not cost-based in accordance with the Act and FCC Rules. All of the rates for network elements are interim (due to the on-going OANAD proceeding) and have not yet been determined to be cost-based as required by the Act. Second, the SGAT fails to comply with Section 252(d)(1) because it does not contain a cost-based rate for network elements when such elements are combined to resemble a Pacific retail service. The interim prices Pacific has set forth in the SGAT and in interconnection agreements with various CLCs, such as the members of the Coalition, contradict the express letter of the Act. Pacific's SGAT, as written, ignores a specific FCC determination that cost-based rates shall apply to combined elements, even if a CLC adds no other element in providing a service to customers. *FCC Order* ¶ 232.

2. Pricing Of Unbundled Elements.

The checklist requires Pacific to provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." *TA96* § 271(c)(2)(B)(ii). Section 251(c)(3), in turn, states that Pacific's rates for unbundled network elements must be "just, reasonable and nondiscriminatory." *Id.* § 251(c)(3). Section 252(d) specifically provides that rates for unbundled network elements must be "based on the cost" of those elements "without reference to a rate-of-return or other rate-based proceeding." *Id.* § 252(d)(1)(A)(i) (emphasis added).

The rates for unbundled elements, interconnection, and call termination under the SGAT are based on the interim prices established in Pacific's Section 252 arbitration with MCI. *See* Pacific's Response to Joint Data Request by AT&T and MCI, "Differences Between Pacific's SGAT Language and the Signed MCI Agreement" pp.14, 15. These rates cannot be found in compliance with Section 252(d) of the Act because they are not cost-based. Only after the Commission's OANAD investigation is completed and permanent rates for unbundled elements are established can the Commission make the requisite finding.

A forward-looking incremental cost study is necessary to meet the Act's requirement that rates must be based on cost without reference to a rate-based, rate-of-return proceeding because use of embedded, or historical, costs in pricing would by definition compensate incumbents with a rate-of-return on their past investments. Forward-looking costs are appropriate because they approximate the results that would be obtained in a competitive market, and therefore prevent ILECs from using interconnection pricing as a means of obstructing competitive entry into the local telecommunications market.

The Arbitrator's Report in the MCI/Pacific arbitration, rather than rely on any of the cost studies submitted by either MCI or Pacific in the arbitration, determined interim rates drawn from cost studies approved in the OANAD proceeding in D.96-08-021, a Commission Order issued in August of

1996 which relied on cost studies submitted by Pacific in December of 1995, before the Act was even passed by Congress and before its February 8, 1996 effective date.[35] For the reasons discussed below, there is no evidence that these rates are cost-based consistent with the requirements of the Act. The MCI/Pacific Arbitrator's Report stipulates that the prices adopted are interim only with permanent rates to be established upon the completion of OANAD. *See* MCI/Pacific Arbitrator's Report, A.96-08-068, December 3, 1996, p. 10-11; and D. 96-08-021, p. 8. Thus, the Commission has not determined whether the cost studies utilized in D. 96-08-068 and the interim prices adopted in the MCI/Pacific arbitration are based on the forward-looking cost standard for the specific unbundled elements required under the Act.[36]

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[35] The Arbitrator's Report in the MCI/GTE California, Inc. arbitration explained that the Commission found it impossible within the time constraints of arbitrations under Section 252 of the Act to adequately examine the cost studies submitted in arbitrations. Thus, the Commission relied on future OANAD examination to establish permanent rates that comply with the forward-looking incremental cost standard required by Section 252(d). *See* MCI/GTEC Arbitrator's Report, December 11, 1996, pp. 6-7.

[36] Certainly, those cost studies did not follow the Total Element Long Run Incremental Cost ("TELRIC") standard required by the FCC Order. Although some of the pricing provisions of the FCC Order have been stayed by the Eighth Circuit, many which impact the validity of any incremental cost study have not (i.e., the specific definition of the network elements to be unbundled). It is largely for this reason that OANAD continues to examine cost studies resubmitted to conform

For example, the interim prices for non-recurring charges ("NRCs") and for vertical features under the SGAT are not cost-based as required by Section 252(d) of the Act.[37] *See* SGAT, Attachment 8, Appendix A. Because Pacific's cost studies for NRCs assumed (erroneously) that new entrants would not be able to recombine unbundled network elements to provide service, the studies developed service ordering and provisioning costs for each unbundled network element separately. Thus, Pacific's SGAT's NRC prices for the platform aggregate the NRCs associated with each unbundled network element, which clearly results in significant double counting in direct violation of the Act. Similarly, Pacific designed the vertical feature cost studies to support its regulatory position (ultimately unsuccessful) that vertical features were separate services that competitors should purchase out of Pacific's retail tariff.

Because the NRC cost studies do not reflect the cost savings when network elements are combined, and because vertical features are not included in the switching element rate, Pacific's interim prices are too high.[38]

Further, the SGAT states that NRCs for unbundled network elements will be revised when the OANAD proceeding is finished. SGAT, Attachment 8, Section 2. Under the OANAD schedule, the Commission is not scheduled to approve permanent cost-based NRCs for unbundled network elements or

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37 The CCTA has no position on the comments stated in this paragraph.

38 The CCTA has no position on the comments stated in this paragraph.

switching element rates that include vertical features until late 1997. One reason that the schedule to examine true cost-based rates for NRCs is extended so late into the OANAD proceeding is that in order to accurately identify the forward-looking economic cost of NRCs, the Commission must examine the cost of permanent industry-wide real-time electronic access to OSS which, as already addressed at length, is not yet on the drawing board, much less complete. See Sections A and B, above. Another serious flaw in the existing NRCs is that they are based on Pacific's cost studies, which studied and estimated the cost of the existing manual and mechanized processes for providing OSS to CLCs, and not the forward-looking cost of the more efficient and less expensive permanent solution.

Pacific's prices in the SGAT are also discriminatory and unjust because Pacific double-charges CLCs for the use of certain unbundled network elements.[39] Under the SGAT, CLCs will pay rates for use of network elements that fully compensate Pacific for all of the relevant costs of these facilities and also give it a reasonable profit. *TA96* § 252(d)(1). But, on top of those rates, CLCs are required to continue paying non-cost-based access charges that Pacific has long charged to AT&T, MCI, and other members of the Coalition for the right to route long distance calls over those exact same local exchange network elements. SGAT, Attachment 18, Section 3.

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[39] ICG and TURN do not join in the comments in this paragraph.

Requiring CLC's to pay non-cost-based access charges on unbundled network elements in addition to the costs of those elements is discriminatory, because Pacific itself does not pay such access charges. And making CLCs pay twice for the same facilities is not "just and reasonable" as required by the Act.[40]

In sum, Pacific will not satisfy the requirements of Sections 251 and 252 nor the Section 271 Checklist until all these errors are corrected and permanent cost-based rates are in effect.[41]

E. Discrimination In Access To Network Elements And Rights-Of-Way.

In order to be approved, the SGAT must provide nondiscriminatory access to network elements in accordance with Section 251(c)(3), the pricing standards of Section 252(d)(1) of the Act, and FCC Rules 51.307, 51.311 and 51.315.[42] Specifically, Pacific must provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible

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[40] AT&T and MCI have both filed actions in United States District Court (Northern District of California) appealing these provisions of their respective interconnection agreements. *See* AT&T v. Pacific Bell, Case No. 97-0080 SI, and MCI v. Pacific Bell, Case No. 97-0670 MMC.

[41] Again, as discussed above, Pacific cannot blame external factors such as the Commission's schedule in not being able to satisfy the requirements of Sections 252 or 252(d), or the checklist. Pacific must meet these requirements before its SGAT can be approved or it can seek relief from the interLATA restriction under Section 271, regardless of whether its ability to meet those requirements depends on factors outside its control.

[42] The SGAT must meet the same general requirements to comply with checklist item 2 of Section 271(c)(2)(B).

point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . ." *TA96* § 251(c)(3). As Pacific's SGAT does not offer the requisite access to many network elements at this time, it fails on the face of its language to meet the requirements of Section 251.

Pacific's SGAT uses vague and ambiguous terms and conditions, delaying access to many of the most important local network elements when they are finally unbundled. On its face, the SGAT does not satisfy Section 251 because it arms Pacific with the ability to greatly delay access to three of the most important local exchange elements: local and tandem switching, local loops, and local transport. As stated earlier, access delayed is access denied. For example, local and tandem switching, local loops, and local transport are the basic building blocks of any local service offering,[43] yet the SGAT gives Pacific undue discretion to withhold access to unbundled network elements indefinitely. The danger of this discretion and incentive to use it to deny or forestall entry by CLCs was expressly recognized by the FCC. As current monopolists, "ILECs have little incentive to facilitate the ability of new entrants, including small entities, to compete against them and, thus, have little incentive to provision unbundled elements in a manner that would provide efficient competitors with a meaningful opportunity to

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[43] In fact, although those three network elements are covered by Section 271(c)(2)(B)(ii) (requiring "[n]ondiscriminatory access to network elements" generally), they also are specifically enumerated as requirements in three other separate checklist items. TA96 §§ 271(c)(2)(B)(iv)-(vi).

compete." *FCC Order* ¶ 307. The FCC also cites the fact that "incumbent LECs could potentially *delay providing access to unbundled network elements*" as a specific example of discriminatory treatment. *Id.* (emphasis added). Delay in providing unbundled network elements constitutes discriminatory treatment, and demonstrates that Pacific has not complied by Section 251 as required for approval of the SGAT. *Id.*

1. Local And Tandem Switching.

The SGAT must provide for unbundled switches to conform to the Act and FCC Rules.[44] Such access to the unbundled switch is essential to enable CLCs to enter the local market as facilities based competitors. Yet, in the SGAT, Pacific gives no concrete dates as to when these important elements will be available. Instead, the SGAT's implementation schedules are laden with self-serving, vague, and ambiguous language. In discussing when access to unbundled local switching will be available, the SGAT states, "Such deployment will be on a project-specific basis *as mutually agreed* by the parties."[45] *SGAT*, Attachment 6, Section 4.1.5.3 (emphasis added). As evidenced by this language, local switching usable by CLCs is not generally

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[44] Similarly, checklist item #6 of Section 271 requires Pacific to provide local switching unbundled from transport, local loop transmission or other services. *TA96* § 271(c)(2)(B)(vi).

[45] Pacific states that it will provide LSNE using three different routing options: A, B, and C. SGAT, Attachment 6, Section 4.1.3. While the cited language applies to routing option C, similar ambiguous language applies to options A and B, as well. *See generally* SGAT, Attachment 6, Section 4.1.5.

available from Pacific at the time of the filing of this SGAT. Pacific simply agrees to maybe agree to provision these arrangements at some indefinite point in the future.[46] In short, this does not constitute the "general offering" required by Section 252(f) for this Commission to approve the SGAT.

Concerning tandem switching, Pacific again includes no specific implementation date. Instead, it states that Pacific will make access available "on the date it is made available to another CLC or upon a date thereafter mutually agreed by the parties." SGAT, Attachment 6, Section 4.2.3.1. Such language, in essence, allows Pacific to dictate when access to tandem switching will actually be provided. Pacific can protect its monopoly over local service by simply refusing to agree with CLCs on the proper date for access. No CLC can rely upon Pacific entering into an agreement with another CLC to gain access to unbundled network elements. If that were the case, then Pacific would be the true gatekeeper since it could pick and choose when and with whom it would enter into the requisite agreements. As the FCC Order states, "[A]n incumbent LEC could potentially act in a nondiscriminatory manner in providing access or elements to *all requesting carriers*, while providing preferential access or elements to itself." *FCC Order* ¶ 312 (emphasis added). Moreover, Pacific cannot

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[46] Pacific states that if a solution is not reached within 45 days, the dispute should be submitted to alternative dispute resolution. While this provision may shorten potential delays (or viewed more realistically, it will likely ensure at least a 45 day delay), it certainly does not make this element available and usable in terms of compliance with the checklist. SGAT, Attachment 6, Section 4.1.5.3.

respond to this criticism by stating that it has met the requirement set forth in its SGAT because it has entered into interconnection agreements with CLCs in which it has made these unbundled elements available. While interconnection agreements with CLCs contain thsese elements, they are not currently available for use by the CLCs, nor are there any fully electronic interfaces in place to order them.

2. Local Loops.

The SGAT must provide access to unbundled local loops (which are referred to as "links" in the SGAT).[47] *TA96* § 251(c)(3). Yet, under the SGAT, essential local loops are not adequately provided on an unbundled basis. As an example, digital links are essential to a CLC's provision of local service to business customers, since only digital links can perform many of the sophisticated high-speed and/or high-volume applications needed by many business customers. In fact, without digital links, CLCs will not be able to offer service equal to Pacific's service, as Pacific uses such digital links. Yet, Pacific will not provide 2-wire and 4-wire digital links to CLCs until "the date Pacific makes such unbundled links available to another CLC or upon a date thereafter mutually agreed by the Parties." SGAT, Attachment 6, Section 3.5.3. As discussed above, such ambiguous language allows Pacific to delay access to vital unbundled network elements

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[47] Checklist item 4 of Section 271 expressly requires that Pacific provide local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

and keep the gate closed to potential competition. Until Pacific is generally offering those links, it does not satisfy the requirements of Section 251, and as such the Commission must reject Pacific's SGAT.

3. Local Transport.

The Act also requires Pacific to provide access to unbundled local transport. *TA96* § 271(c)(2)(B)(v). But, as with local loops, access to unbundled local transport will only be available "on the date Pacific makes it available to another CLC or upon a date thereafter mutually agreed by the Parties." SGAT, Attachment 6, Section 5.5. Again, Pacific is merely agreeing that a "mutual agreement" is possible in the future. If it chooses to, Pacific can refuse to provide this access to all CLCs indefinitely without breaking the express terms of the SGAT. Such a scenario is unacceptable. The SGAT is deficient in providing CLCs with the requisite specificity as to when access to unbundled local transport will be available. Moreover, Pacific cannot respond to this criticism by stating that it has met the requirement set forth in its SGAT because it has entered into interconnection agreements with CLCs in which it has made these unbundled elements available. While interconnection agreements with CLCs contain thsese elements, they are not currently available for use by the CLCs, nor are there any fully electronic interfaces in place to order them.

4. Combinations Of Unbundled Elements.[48]

In addition to setting unnecessary barriers to individual unbundled element access, Pacific has articulated a policy of indefinite delay in providing combinations of elements.[49] In a letter dated February 28, 1997 to Mr. Steve Huels of AT&T, Mr. Doug Garret (Executive Director, Local Interconnection) of Pacific demanded that AT&T "commit to pay the development costs for the combinations [of UNEs]." See Attachment A hereto and incorporated herein by this reference. It is interesting to note that the Pacific-AT&T, Pacific-Sprint, and Pacific-MCI Interconnection Agreements are the only interconnection agreements that Pacific has signed to date which make available combinations of UNEs in accordance with the Act.[50] Although Pacific is claiming it can require full payment in advance from AT&T under a disputed interpretation of their interconnection agreement,

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[48] TURN does not join in the comments set forth in this section (V.E.4.) of these Comments at this time.

[49] Although the SGAT, on its face, appears to offer unbundled network element combinations, it provide no firm date for the availability of these combinations. Instead, Pacific's interpretation of its duty under the SGAT appears to be an entitlement to advance payment from a requesting CLC without any reciprocal promise of delivery.

[50] Section 251(c)(3) of the Act states that Pacific has "The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis ... An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." TA96 § 251(c)(3) (emphasis added).

Pacific's Mr. Garret went on to state Pacific's position with regard to all CLCs:

> "Even in the absence of the clear contractual language, it would be nonsensical and wasteful to assume that Pacific would develop ordering and provisioning and provide over 50 combinations with no recovery of development costs . . . In light of AT&T's or any other CLEC's lack of commitment to order any combination, it would be a classic example of economic waste to require Pacific to move forward with implementation, let alone rapid implementation, without AT&T's commitment to pay the development cost."

Because Pacific is demanding a commitment to pay before the elements are developed, it has, in essence, armed itself with the power to delay development and implementation of UNE combinations. Because Pacific can determine if and how quickly UNE combinations will be developed, it is not a meaningful option for a CLC to order a combination of UNEs from the SGAT under the aegis of Section 251(c)(3) of the Act. Mr. Garret's letter makes clear that Pacific will not develop combinations of UNEs to be available to all CLCs without a prior commitment of payment. By demanding prior payment, Pacific is essentially demanding a blank check from the CLCs with no guarantee of Pacific's performance, and no assurance that the price of the completed performance will be reasonable and cost-based despite requirements of the Act.

Thus, Pacific's position as to the availability of combinations of UNEs is not "nondiscriminatory", but is instead a barrier to entry which prohibits